

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TONI P. STICKLE,

Plaintiff,

Case No: 1:07-cv-230

v

HON. JANET T. NEFF

COMMISSIONER OF SOCIAL SECURITY,

Defendant.

JUDGMENT

Plaintiff filed a claim for disability insurance benefits and supplemental security income, identifying her disabling conditions as asthma, arthritis, dislocated knee cap, pulled right arm muscle, high blood pressure, anxiety attacks, shortness of breath, and diabetes. The Commissioner of the Social Security Administration denied her claim, and plaintiff seeks judicial review of the decision. The matter was referred to the Magistrate Judge, who issued a Report and Recommendation, recommending that this Court reverse and remand the Commissioner's decision for a re-evaluation of plaintiff's claims regarding her left knee and the limitations caused by her asthma. The matter is presently before the Court on defendant's objection to the Report and Recommendation.

Defendant argues that this Court should affirm the Commissioner's final decision and reject the Magistrate Judge's recommendation for remand. Defendant argues that remand is inappropriate because the Administrative Law Judge provided enough discussion and citations to the record to explain and support his decision. In accordance with 28 U.S.C. § 636(b)(1) and FED. R. CIV. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and

Recommendation to which defendant makes its objection. The Court denies defendant's objection.

The Magistrate Judge correctly determined that remand was necessary where the ALJ gave only a cursory review of plaintiff's claims regarding her left knee pain. The ALJ did not discuss the impairment with any detail, nor did he examine whether the condition met either prong of the test for evaluating an alleged disability based upon pain. *See Duncan v. Sec'y of Health and Human Servs.*, 801 F.2d 847 (6th Cir. 1986).

The Magistrate Judge also opined that the ALJ erred in failing to pose a question to the vocational expert that incorporated respiratory or environmental limitations arising from plaintiff's asthma. Though the ALJ acknowledged that plaintiff's asthma necessitated emergency room prednisone treatments, the ALJ neglected to consider plaintiff's testimony that various environmental factors triggered her asthma attacks. The Magistrate Judge noted that environmental factors were not taken into consideration by the Vocational Expert when determining what type of jobs the plaintiff would be able to perform.

THEREFORE, IT IS ORDERED that the objections (Dkt 12) are DENIED, the Report and Recommendation of the Magistrate Judge (Dkt 11) is APPROVED and ADOPTED as the opinion of the Court, and the decision of the Commissioner of Social Security is REVERSED and REMANDED for a re-evaluation of plaintiff's claims regarding her left knee and a re-evaluation of limitations caused by her asthma.

Dated: September 24, 2008

/s/ Janet T. Neff

JANET T. NEFF

United States District Judge